

ORDINANCE 90 - 00

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AMENDING CITY OF CAPE CORAL CODE OF ORDINANCES BY RENUMBERING CHAPTER 15, "FRANCHISE," ARTICLE I, "CABLE TELEVISION FRANCHISES," SECTIONS 15-30, "PRICE EQUALIZATION," AND 15-31, "VIOLATION," AND BY REPEALING EXISTING CHAPTER 15, "FRANCHISE," ARTICLE I, "CABLE TELEVISION FRANCHISES," SECTIONS 15-1 THROUGH 15-29, AND BY ADOPTING A NEW CHAPTER 15, "FRANCHISE," ARTICLE I, "CABLE COMMUNICATIONS," SECTIONS 15-1 THROUGH 15-35; ADOPTING PROCEDURES AND REQUIREMENTS RELATING TO CABLE COMMUNICATION FRANCHISES TO REFLECT CHANGES IN APPLICABLE LAW AND TO BETTER ENSURE THAT USE OF CITY STREETS BY CABLE SYSTEMS SERVES THE PUBLIC INTEREST; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING A SAVINGS CLAUSE AND EFFECTIVE DATE.

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WHEREAS, the City of Cape Coral, has under consideration the renewal of its existing cable franchise pursuant to the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 et seq.; and

WHEREAS, the enactment of the Telecommunications Act of 1996, recent court precedent construing the scope of municipal regulatory authority over cable franchises granted in their jurisdiction, and applicable changes and developments in cable technology and services have resulted in a changed regulatory environment; and

WHEREAS, the City Council of the City of Cape Coral, Florida, deems it necessary to enact a new comprehensive Cable Code, to take into account the afore-described changes and developments and to better ensure that use of City streets by cable systems serves the public interest.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1: Authority. The City Council of the City of Cape Coral has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes, and the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended.

SECTION 2: Code Renumbering. The City of Cape Coral Code of Ordinances, Chapter 15, "FRANCHISE," Article I, "Cable Television franchises," Sections 15-30, "Price equalization," and 15-31, "Violation," are hereby renumbered, respectively, as Sections 15-36 and 15-37

SECTION 3: Creation of Cable Communications Ordinance. The City of Cape Coral Code of Ordinances, Chapter 15, "FRANCHISE," Article I, "Cable Television Franchises," Sections 15-1 through 15-29, is hereby repealed in its entirety and replaced with the

following new Chapter 15, "FRANCHISE," Article I, "Cable Communications," Sections 15-1 through 15-35:

Chapter 15

FRANCHISE

ARTICLE I. CABLE COMMUNICATIONS

Section 15-1. Short title.

This Article shall be known and may be cited as City of Cape Coral, Florida Cable Communications Ordinance.

Section 15-02. Definitions.

For the purpose of this Article, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any franchise agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 521 et seq., and the Telecommunications Act of 1996, and as those Acts may hereinafter be amended (collectively the "Communications Act"), and, if not defined therein, their common and ordinary meaning.

A. "Activated Channel" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for educational or governmental use. Channels on which signals flow in the direction from the headend to the subscriber are referred to as "downstream channels". Where the signal flows to the headend for re-distribution, it shall be referred to as an "upstream channel".

B. "Access Channel" means any channel on a cable system set aside without charge by the franchisee for non-commercial educational and/or local governmental use.

C. "Affiliate" means any person which directly or indirectly owns or controls a grantee or franchisee, any person which a grantee or franchisee directly or indirectly owns or which it controls, or any person under common ownership or control with a grantee or franchisee.

D. "Analog Channel" means bandwidth in the electromagnetic spectrum capable of carrying one (1) standard television signal that is delivered in an analog format.

E. "Applicant" means any person submitting an application within the meaning of this Article.

F. "Application" means any proposal, submission or request to:

(1) construct and operate a cable system within the City;

(2) transfer a franchise or control of the franchisee;

(3) renew a franchise;

(4) modify a franchise; or

(5) seek any other relief from the City pursuant to this Article, a franchise agreement, the Communications Act, or other applicable law. An application includes an applicant's initial proposal, submission or request, as well as any and all subsequent amendments or supplements to the proposal and relevant correspondence.

G. "Basic Cable Service" or "Basic Service" means any service tier which includes the retransmission of local television broadcast signals, and educational or governmental access channels.

H. "Communications Act" means the Communications Act of 1934, 47 U.S.C. § 151 et seq., as that Act has been and may hereinafter be amended.

I. "Cable Service" means the transmission of video or other programming services over a cable system to subscribers together with any subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services. Unless otherwise preempted by applicable law, cable internet services, including, but not limited to @Home, Roadrunner or other services, provided by a franchisee, its parent, affiliate or subsidiary over the cable system shall be deemed "cable services" as permitted under Title VI of the Communications Act of 1934, as amended.

J. "Cable System," or "System," means any facility consisting of a set of closed transmission paths or other transmission lines or forms of terrestrial transmission and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming, and which is provided to multiple subscribers within the City. Such term does not include:

(1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(2) a facility that serves subscribers without using any public right of way;

(3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to

subscribers, unless the extent of such use is solely to provide interactive on demand services;

(4) an open video system that complies with Section 653 of the Telecommunications Act of 1996; or

(5) any facilities of any electric utility used solely for operating its electric utility systems. The foregoing definition of "cable system" shall not be deemed to circumscribe the valid authority of the City to regulate the activities of any other communications system or provider of communications services, including but not limited to telephony and open video systems.

K. "City" means the City of Cape Coral, a municipal corporation of the State of Florida, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

L. "Control of a Franchisee or Applicant" means possession of the ability to direct or cause the direction of the management or policies of a franchisee, grantee or applicant, or the operation of a franchisee's system, either directly or indirectly, whether through ownership of voting securities, by contract or in any other manner.

M. "Fair Market Value" means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the franchise itself.

N. "FCC" means the Federal Communications Commission, or any successor governmental entity thereto.

O. "Franchise" means the right granted by the City to a franchisee in a franchise agreement to construct, maintain and operate a cable system under, on, and over streets, roads and any other public ways, rights-of-ways, or easements within the City. The term does not include any license or permit that may be required by this Article or other laws, ordinances or regulations of the City for the privilege of transacting and carrying on a business within the City or for disturbing or carrying out any work on any street.

P. "Franchise Agreement" means a contract entered into in accordance with the provisions of this Article between the City and a franchisee that sets forth the terms and conditions under which the franchise will be exercised.

Q. "Franchise Area" means that territory within the corporate limits of the City, as those limits may change from time to time through annexation or contraction, over which the terms of a franchise agreement shall extend.

R. "Franchisee" means any person granted a franchise pursuant to this Article who has entered into a franchise agreement with the City.

S. "Gross Revenues" means all revenues derived by the franchisee and, any affiliates, subsidiaries or parent of the franchisee from the operation of the cable system to

provide cable services in the City. Gross revenues include, but are not limited to, fees charged subscribers for basic service; fees charged subscribers for any optional, premium, per-channel or per-program service; fees charged subscribers for any tier of service other than basic service; installation, disconnection, reconnection and change-in-service fees; late fees in excess of Five Dollars (\$5.00) (plus any amount of any increase no greater than any increase in the annual CPI); leased access fees, payments or other consideration from programmers for carriage of programming on the system (excluding marketing support to the extent such funds are not considered revenue under GAAP); revenue from converter, remote, modem or any other equipment rentals; revenues from leases of cable or fiber optic lines and other transmission devices and equipment; cable modem and internet services to the extent included under subsection I above; advertising revenues allocable to the City based on a percentage of subscriber base in the City divided by the subscriber base of the system. Such percentage shall then be multiplied by the total advertising revenue of the system to determine the allocable gross revenue stemming from advertising; revenues from home shopping channels or other sources allocable to the City, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the franchisee shall allocate the percentage of revenue to the City which is equivalent to the percentage of the population of the City divided by the total population for the allocable franchise areas in question. Gross revenues shall be the basis for computing the franchise fee imposed pursuant to Section 15-16 hereof. Gross revenues shall not include revenues directly generated by affiliated programmers for the provision of programming; any taxes on services furnished by the franchisee which are imposed upon any subscriber or user by the state, county, City or other governmental unit and collected by the franchisee on behalf of said governmental unit and which the franchisee passes on in full to the applicable tax authority. In addition, gross revenues shall not include the first Five Dollars (\$5.00) (plus any amount of any increase no greater than any increase in the annual CPI), of late fee payments; return check charges, and in returned equipment charges. However, it is hereby expressly provided that franchise fees shall be included in the calculation of gross revenues. Further, franchise fees shall not be paid on subscriber deposits unless and until said deposits are applied to a customer account for services rendered. Revenue of an affiliate, subsidiary or parent shall be gross revenues under this definition only to the extent such revenue is derived from the operation of the cable system to provide cable service by the affiliate, subsidiary or parent acting in the capacity of a cable operator and not in another capacity such as programmer.

T. "Institutional Network" means a dedicated closed network, or an alternative acceptable to the City, for use by the City to provide cable services and non-cable services for educational and governmental use within the City. The network shall be capable of providing one-way, two-way, interactive, and machine-to-machine transfer of audio, video, voice and data signals within the network as designated by the City.

U. "Interconnection" means the electronic connection of two or more franchised cable systems for the purpose of sharing programming.

V. "Internet" shall mean collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocols to communicate information of all kinds by wire or radio.

W. "Internet Service Provider" shall mean a person who provides a service that enables users to access content, information, electronic mail, or other services offered over the internet.

X. "Law" means all duly enacted and applicable federal, state, county and City laws, ordinances, codes, rules, regulations and orders.

Y. "Leased Access Channel" means a channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C. § 532, for commercial use by persons unaffiliated with the franchisee.

Z. "Overbuild" means that portion of a cable system constructed to serve subscribers already served by an existing cable system.

AA. "Person" means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the City.

BB. "Service Tier" means a category of multi-channel cable service provided by a franchisee and for which a separate charge is made by the franchisee.

CC. "State of the Art" means that level of cable system technical performance, capacity, equipment, components and service (without reference to the content of service) equal to that which has been developed and demonstrated to be generally acceptable and used by the franchisee, its parents, affiliates or subsidiaries in systems of comparable size based upon number of subscribers, excluding Tests, and which is technically and commercially feasible in the franchisee's system.

DD. "Street or Streets" means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the City holds any kind of property interest or over which the City exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a cable

system. The term includes any right-of-way granted to the public or to any governmental body by way of conveyance, dedication, restriction, or by easement and any area within an easement given for governmental purposes.

EE. "Subscriber" means any person who lawfully receives cable service delivered over the cable system.

FF. "Subscriber Base" means the total number of residential and commercial subscribers within the City. For purposes of calculating subscribers under bulk or multi-user contracts, the franchisee shall count each individual unit (e.g., in a multiple family dwelling, a unit will be defined as each subscriber unit within the structure) included within a contract for service as one subscriber, or may use any reasonable equivalency measures provided it uses such measures uniformly for all franchise areas served by the system.

GG. "System Malfunction" means any cable system equipment, facility or signal failure or malfunction that results in the loss of satisfactory service on one or more channels to one or more subscribers. A malfunction is major if it affects ten (10) or more subscribers.

HH. "Transfer of a Franchise" means any transaction in which:

(1) Any ownership or control of a franchisee or its cable system is transferred from one person or group of persons to another person or group of persons so that control of a franchisee is transferred; or

(2) The rights and/or obligations held by a franchisee under a franchise agreement are transferred or assigned to another person, group of persons or business entity.

A transfer shall be considered "pro forma" when it involves a transfer to a person, group of persons or business entity affiliated with the franchisee and will not result in a change in the control or ownership of the franchisee.

II. "Two-way Capability" means the incorporation into a cable system of all appropriate design and engineering characteristics and features so that two-way transmission, including but not limited to addressability, over the system can be implemented and activated.

JJ. "Video Channel or Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, including the associated audio signal.

Section 15-03. Intent and purposes.

A. It is the intent of the City and the purpose of this Article to promote the public health, safety, and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system within the City; to provide for the regulation, to the extent provided for by law, of each cable system within the City in the public interest; to provide for the payment

of fees and other valuable consideration by a franchisee to the City for the use of streets by its cable system; to promote the widespread availability of quality cable service to City residents and businesses, the City, and other public institutions; to encourage the development of cable and other communications technologies and cable systems as a means of communication between and among members of the public, City businesses, the City, and other public institutions; to promote competitive cable rates and services; to promote the safe and efficient use of City streets; to enhance and maximize the communicative potential of streets used by cable systems; and to encourage the provision of a diversity of information sources to City residents, businesses, the community, the City, and other public institutions by cable technology.

B. Recognizing the continuing development of communications technology and uses, it is the policy of the City to encourage experimentation and innovation in the development of cable system uses, services, programming and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws.

Section 15-04. Grant of authority; franchise required.

A. The City may grant one or more franchises in accordance with this Article.

B. No person may construct or operate a cable system or any other communications transmission facilities over, on, or under public streets in the City without a franchise granted by the City and no person may be granted a franchise without having entered into a franchise agreement with the City pursuant to this Article or other such Ordinance of the City as may be applicable.

C. Any franchise granted pursuant to this Article shall be solely for the provision of cable service and shall not be construed to authorize the provision of telephone, non-cable video or other telecommunications service.

D. Nothing in this Article shall prevent a franchisee from applying for a separate franchise for the provision of telephone, non-cable video or other telecommunications service, pursuant to applicable law.

Section 15-05. Franchise characteristics.

A. A franchise authorizes use of City streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a cable system to serve subscribers within the City, but does not expressly or implicitly authorize the franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Communications Act, 47 U.S.C. § 541(a)(2) or as otherwise may be provided by binding law), or to use publicly or

privately owned conduits without a separate agreement with the owners.

B. A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the City, or affect the City's right to authorize use of City streets to other persons to operate cable systems or for other purposes as it determines appropriate. Franchises shall be granted in a nondiscriminatory and competitively neutral manner, consistent with applicable law.

C. All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the streets, and the City reserves the right to reasonably designate where a franchisee's facilities are to be placed within the streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights of way.

D. A franchise shall be a privilege which is in the public trust. No transfer of a franchise shall occur without the prior consent of the City and unless application is made by the franchisee, and City approval obtained, pursuant to Section 15-24 hereof and the franchise agreement.

E. A franchise granted to an applicant pursuant to this Article to construct, operate and maintain a cable system within the City, shall be deemed to constitute both a right and an obligation on the part of the franchisee to provide the services and facilities of a cable system as required by the provisions of this Article and the franchise. The franchise agreement shall constitute all of the terms and conditions of the franchise that are finally negotiated and agreed upon by the City and franchisee. A franchisee shall be bound by all documents or other portions of an application which the City relies upon as material and an inducement to granting a franchise, and which are integrated by the City and franchisee as an exhibit to the franchise. All oral representations made by an applicant, or its representatives, before the City Council and on which the Commission explicitly relies in the grant of a franchise, shall be part of the record and binding upon the franchisee.

F. Notwithstanding anything to the contrary, in the event that a franchisee, its parent, affiliate or subsidiary elects to offer to subscribers video programming services through any means or method not included within the definition of a cable system, including but not limited to an "open video system," franchisee shall remain subject to all terms and conditions of the cable franchise granted pursuant to this Article, with respect to its operation of the cable system under the franchise.

Section 15-06. Franchisee Subject to Other Laws, Police Power.

A. A franchisee shall at all times be subject to and shall comply with all applicable federal, state and local laws. A franchisee shall at all times be subject to all lawful exercise of the police power of the City, to the

extent not inconsistent with the express terms of a franchise agreement.

B. Subject to applicable law, except as may be specifically provided in this Article or under the terms of a franchise agreement and subject to the Communications Act, the failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Article or a franchise agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

Section 15-07. Interpretation of franchise terms; conflicts.

A. The provisions of this Article in effect at the time of a grant of an initial or renewal franchise shall apply to a franchise agreement as if fully set forth in the franchise agreement, and the express terms of this Article in effect at the time of a grant of an initial or renewal franchise shall prevail over conflicting or inconsistent provisions in a franchise agreement unless such franchise agreement, expresses an explicit intent to amend or modify a requirement of this Article.

B. Except as to matters which are governed by federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the State of Florida.

Section 15-08. Applications for grant, renewal, modification or transfer of franchises.

A. A written application shall be filed with the City for:

- (1) Grant of a new franchise;
- (2) Renewal of a franchise in accordance with Section 626 of the Communications Act, 47 U.S.C. 546;
- (3) Modification of a franchise agreement;
- (4) Transfer of a franchise; or
- (5) Any other relief from the City pursuant to this Article or a franchise agreement.

B. To be acceptable for filing, a signed original of the application shall be submitted together with seven (7) copies, be accompanied by the required non-refundable application filing fee as set forth in Section 15-08(I) hereof, conform to any applicable request for proposals, and contain all reasonably required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

C. All applications accepted for filing shall be made available by the City for public inspection.

D. An application for the grant of a new franchise may be filed pursuant to a request for proposals issued by

the City or on an unsolicited basis. The City, upon receipt of an unsolicited application, may issue a request for proposals. If the City elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform the City that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application, including an unsolicited application which applicant has subsequently designated as responsive, which does not conform to the reasonable requirements of a request for proposals may be considered non-responsive and denied on that basis.

E. An application for the grant of an initial franchise shall contain, at minimum, the following information:

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with five percent (5%) or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; all officers and directors of the applicant; and any other cable system ownership or other communication ownership interest of each named person;

(2) An indication of whether the applicant, or any person controlling the applicant, or any officer, or director or person with five percent (5%) or more ownership interest in the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;

(3) A demonstration of the applicant's technical, legal and financial ability to construct and/or operate the proposed cable system, including identification of key personnel;

(4) A statement prepared by a certified public accountant or duly authorized financial officer of the applicant regarding the applicant's financial ability to complete the construction and operation of the cable system proposed;

(5) A description of the applicant's prior experience in cable system ownership, construction and operation, and identification of communities in which the applicant or any person controlling the applicant or having more than a ten percent (10%) ownership interest in applicant has, or has had, a cable franchise or license or any interest therein;

(6) A description of the physical facilities proposed, including channel capacity, performance characteristics, headend, and access facilities; upon

request, the applicant shall make information on technical design available for inspection;

(7) A description of the construction of the proposed system, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

(8) For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the applicant's ownership interest in any proposed program services to be delivered over the cable system;

(9) A demonstration of how the applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the City and any surveys or other research conducted by franchisee.

(10) A description of the applicant's proposal to provide access channels, facilities, equipment, personnel and financing in support of the City's education and government related activities.

(11) A description of any cable and non-cable telecommunications services offered by the applicant or its parent, affiliate or subsidiary and franchisee's plan with respect to the availability of such services to subscribers in the City.

(12) Pro forma financial projections for the first five (5) years of the franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;

(13) If an applicant proposes to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and the ability of the streets to accommodate an additional system;

(14) A detailed statement of franchisee's policies and practices with respect to granting access to its cable system for the provision of cable internet services.

(15) If requested, a proposal to provide an I-Net to the City.

(16) A description of the Applicant's proposal to transmit the City's access channels to neighboring communities, upon request of a neighboring community which receives services from the City.

(17) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Article and information that the City may request of the applicant that is relevant to the City's consideration of the application; and

(18) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the proposal meets all federal and state law requirements.

F. An application for modification of a franchise agreement shall include, at minimum, the following information:

(1) The specific modification requested;

(2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;

(3) A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545.

(4) Any other reasonable information necessary for the City to make an informed determination on the application for modification; and

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

G. An application for renewal of a franchise shall comply with the requirements of Section 15-23 hereof.

H. An application for approval of a transfer of a franchise shall comply with the requirements of Section 15-24 hereof.

I. To be acceptable for filing, an application shall be accompanied by a non-refundable filing fee in the following amount, as appropriate:

- | | |
|-------------------------------------|-----------|
| (1) For a new or initial franchise: | \$ 15,000 |
| (2) For renewal of a franchise: | \$ 10,000 |
| (3) For a transfer of a franchise: | \$ 2,500 |

- (4) For modification of a franchise agreement pursuant to 47 U.S.C. § 545: \$ 2,500
- (5) For any other relief: \$ 2,500

The purpose of the filing fee is to defray a portion of the City's cost in processing an application. Such fee shall be credited against amounts due under Section 15-09.D herein.

Section 15-09. Grant of franchises.

A. The City may grant a franchise for a period not to exceed fifteen (15) years, plus such additional time as may equal the unexpired term of a pre-existing franchise.

B. In evaluating an application for a franchise, the City may consider, among other things, the following factors: the applicant's technical, financial, and legal qualifications to construct and operate the proposed system; the adequacy of the proposed construction arrangements, if any, facilities, equipment, and services based on the public convenience, safety and welfare; the applicant's experience in constructing and operating cable systems and providing cable service in other communities, if any; the ability of City streets to accommodate the proposed system, if any; the potential disruption to users of City streets and any resultant inconvenience to the public; and whether the proposal will meet reasonably anticipated community needs and serve the public interest. Evaluation by the City shall not be based on the content of the programming the applicant proposes to provide.

C. The City shall hold a public hearing to consider an application or applications. The City shall not consider an application for a franchise unless and until applicant has submitted a proposed franchise agreement which it is prepared to execute. The applicant(s) shall be notified of the hearing and shall be given an opportunity to be heard. Based upon the application(s), the testimony presented at the public hearing, any recommendations of the City staff, and any other information relevant to the application(s), and the terms and conditions contained in the proposed franchise agreement, the City shall decide by ordinance whether to approve or deny the proposed franchise agreement(s), and thereby grant or deny a franchise. The City may make the grant of a franchise conditioned upon the completion of construction within a reasonably prescribed time or upon the performance of other specific obligations which are to be set forth in the franchise agreement, specifying that failure to comply with the condition will cause the franchise to become null and void.

D. Franchisee shall reimburse the City for all costs and expenses incurred by the City in considering and processing the application, including but not limited to consulting and legal costs, less the amount of the filing fee set pursuant to Section 15-08.I. Within five (5) calendar days prior to the planned date of the public hearing on the proposed ordinance to approve or deny the franchise agreement or renewal or modification or transfer thereof by the City Council, the City shall advise the

franchisee of the amount of the processing fee and its method of calculation. If the processing fee is not paid to the City within ten (10) calendar days of the date of the City Council ordinance approving or denying the franchise agreement or a modification or transfer thereof, any approval granted by such ordinance will be null and void without further action by the City.

Section 15-10. Insurance; surety; indemnification.

A. A franchisee shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the entire term of the franchise including any renewals thereof, the following liability insurance coverage insuring the franchisee and naming the City as an additional insured: worker's compensation and employer liability insurance to meet all requirements of Florida law and general comprehensive liability insurance with respect to the construction, operation and maintenance of the cable system, and the conduct of franchisee's business in the City, in the minimum amounts of:

(1) \$250,000 for property damage in any one accident;

(2) \$500,000 for personal bodily injury to any one person; and

(3) \$1,000,000 for personal bodily injury in any one accident.

B. All insurance policies shall be with sureties qualified to do business in the State of Florida; shall be with sureties with a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition. The City may require coverage and amounts in excess of the above minimums where necessary to reflect changing liability exposure and limits or where required by law.

C. A franchisee shall keep on file with the City copies of certificates of insurance, which certificates shall indicate evidence of payment of the required premiums. The City shall require that the City, its officers, boards, commission, commissioners, agents and employees are listed as additional insureds. In the event of a potential claim with regard to which the City claims insurance coverage, a franchisee shall immediately respond to all reasonable requests by the City for information with respect to the scope of the insurance coverage.

D. All insurance policies shall name the City as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days prior written notice thereof has been given to the City. A franchisee shall not cancel any required insurance policy without submission of proof that the franchisee has obtained alternative insurance satisfactory to the City which complies with this Article.

E. A franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, commissions, commissioners, agents, and

employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses arising out of the construction, maintenance or operation of its cable system, the conduct of franchisee's business in the City, or in any way arising out of the franchisee's enjoyment or exercise of a franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Article or a franchise agreement, provided, however, that franchisee's obligation hereunder shall not extend to any claims to the extent caused by the misconduct or negligence of the City, its officials, boards, commissioners, agents or employees. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings; and claims arising out of copyright infringements or a failure by the franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the cable system, claims arising out of Section 638 of the Communications Act, 47 U.S.C. § 558, and claims against the franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation. Notwithstanding the foregoing, franchisee may select counsel to represent the City. City agrees to notify franchisee, in writing, within ten (10) days of City receiving notice of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict.

Section 15-11. Security Fund.

A. A franchise agreement shall provide that, prior to the franchise becoming effective, the franchisee shall post with the City a cash deposit, performance bond, letter of credit, or such other form of security as determined by the City in its sole discretion and as set forth in a franchise agreement, to be used as a security fund to ensure the franchisee's faithful performance of and compliance with all provisions of this Article, the franchise agreement, and other applicable law, and compliance with all orders, permits and directions of the City, and the payment by the franchisee of any claims, liens, fees, or taxes due the City which arise by reason of the construction, operation or maintenance of the system.

B. The amount of the security fund shall be set in the franchise, and shall be an amount that, under circumstances existing at the time, that is necessary to protect the public against financial loss, to provide adequate incentive to the franchisee to comply with this Article and the franchise agreement, and to enable the City to effectively enforce compliance therewith; but in no event shall be less than \$50,000.00. The City reserves the right to increase or decrease the minimum security fund amount required by this Section as it may deem necessary from time to time, provided that such change shall not

affect an existing franchise unless specifically so provided in a franchise agreement.

C. The franchise agreement may provide for procedures to be followed with respect to the security fund which exceed the minimum requirements contained herein. Neither the posting of the cash deposit or filing of an indemnity bond or any form of surety bond with the City, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under the terms of its franchise for damages, either to the full amount of the security fund or otherwise.

D. The rights reserved to the City with respect to the security fund or an indemnity bond are in addition to all other rights of the City, whether reserved by this Article or authorized by other law or the franchise agreement, and no action, proceeding or exercise of a right with respect to such security fund or indemnity bond will affect any other right the City may have.

E. If the franchisee fails to pay to the City any compensation within the time fixed herein or any fines, or fails to repay the City within thirty (30) days any damages, costs or expenses which the City is compelled to pay by reason of any act or default of the franchisee in connection with the franchise, or fails, after ten (10) business days written notice of such failure by the City to comply with any provision of the franchise agreement which the City reasonably determines can be remedied by demand on the security fund, the City may withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the City shall notify the licensee of the amount and the date thereof.

F. Within fifteen (15) days after notice to it that any amount has been withdrawn from the security fund deposited pursuant to subsection A of this section, the franchisee shall pay to or deposit with the City a sum sufficient to restore such security fund to the amounts specified in subsection A. Failure to replenish the security fund shall subject the franchisee to penalties as set forth in Section 15-22, and interest on the amount in question shall accrue at the maximum rate under applicable law.

G. That portion of the security fund deposited pursuant to this section necessary to compensate the City for damages and costs sustained shall become the property of the City in the event that a franchise granted pursuant to this Article is canceled or terminated by reason of the default of the franchisee. The franchisee, however, shall be entitled to the return of such security fund, or portion thereof, with interest, as remains on deposit with the City at the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the franchisee.

H. In the event franchisee disputes or otherwise challenges an amount determined by the City to be a deficiency in the security fund under subsection F hereof,

the amount in question shall be placed in an escrow account until such time as the dispute is resolved. The placement by franchisee of amounts in escrow pending resolution of a dispute under this section shall toll the accrual of penalties or interest under this section.

Section 15-12. Construction Bond.

A. A franchise agreement shall provide that, prior to any cable system construction, upgrade, rebuild or other work in the streets a franchisee shall establish in the City's favor a construction bond in an amount specified in the franchise agreement or other authorization as necessary to ensure the franchisee's faithful performance of the construction, upgrade, rebuild or other work.

B. In the event a franchisee subject to such a construction bond fails to complete the cable system construction, upgrade or other work in the streets in a safe, timely and competent manner in accord with the provisions of the franchise agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the franchisee, or the cost of completing or repairing the system construction, upgrade or other work in the streets, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund pursuant to Section 15-11 hereof where such amount exceeds that available under the security fund.

C. The franchise agreement may specify that upon completion of the system construction, upgrade, rebuild or other work in the streets and payment of all construction obligations of the cable system to the satisfaction of the City, the City may eliminate the bond or reduce its amount. However, the City may subsequently require an increase in the bond amount for any subsequent construction, upgrade, rebuild or other work in the streets.

D. The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City Attorney; and shall provide that: "This bond may not be canceled, or allowed to lapse, until thirty (30) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

E. The rights reserved by the City with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the City may have under this Article, the franchise agreement, or at law or equity.

Section 15-13. Minimum Facilities and Services.

A. Notwithstanding anything herein to the contrary, when reasonably practicable but no later than twelve (12) months after notice from the City, a franchisee shall make

such technically and commercially feasible improvements to its system as may be necessary to bring the system to the state of the art. The City shall grant extensions of the time within which a franchisee must comply with the obligations set forth herein, to accommodate the process to be afforded a franchisee hereunder, for good cause shown (including evidence that the franchisee has commenced necessary measures to comply with the obligations herein), but in no event to exceed twelve (12) months.

(1) Any cable system that commences construction, including but not limited to initial construction, rebuild, upgrade, or reconstruction after the effective date of this Article shall have a minimum capacity of at least 750 MHZ providing no less than seventy-eight (78) video channels available for immediate use. A franchise agreement may provide for a larger minimum channel capacity requirement.

(2) The City and a franchisee shall agree in a franchise agreement that a franchisee provide access channels, facilities and other support for educational and/or governmental use.

(3) Cablecasting of City Council meetings live to all subscribers located within the City may be provided on a government channel.

(4) A cable system shall provide leased access channels as required by federal law.

(5) City and school outlets.

(a) A franchisee shall, upon request, provide at least one cable television service outlet and when technically feasible and available in the area from franchisee, or its affiliate, parent or subsidiary, serving subscribers within the area served by the system, at least one standard installation connection to a cable on-line service to each public elementary and secondary school within its franchise area that is passed by its cable system, and shall provide basic cable service and on-line cable internet service to those installations at no cost to the City or school involved, and shall charge no more than its time and material costs for any additional cable service outlets (including cable internet service) to such facilities.

(b) A franchisee shall, upon request, provide at least one standard installation for basic cable television service to each and every City government building within its franchise area that is passed by its cable system and shall provide basic cable service to those installations at no cost to the City and shall charge no more than its costs for any additional basic cable service outlets to such facilities.

(6) A franchisee shall design its system to allow the City or other appropriate government body,

to interrupt cable service in an emergency to deliver necessary information to subscribers, at minimum consistent with FCC regulations.

(7) A franchisee shall make available to its subscribers equipment capable of decoding closed circuit captioning information for the hearing impaired. A franchisee may impose a reasonable charge for such equipment.

(8) Standard installation shall consist of a drop, not exceeding one hundred twenty five (125) feet from the cable plant to the nearest part of a subscriber's residence; or, if a commercial subscriber, the nearest part of subscriber's place of business.

(9) Any and all rights which the City may have, now or in the future, to regulate a franchisee's provision of cable internet services are hereby reserved by the City and may be exercised at any time throughout the term of the franchise, unless otherwise prohibited by applicable law. If a franchisee provides access to its system to internet service providers on an open, non-discriminatory basis on a cable system owned or operated by the franchisee, its parents, affiliates or subsidiaries serving the majority of subscribers in the State of Florida, franchisee shall provide access on such basis on any service which the franchisee provides in the City.

(10) A franchisee shall, at all times during the term of a franchise, maintain a state of the art cable system within the franchise area, as that term is defined in this Article, and consistent with the provisions of subsection A hereof.

B. A franchisee shall make cable service available to every dwelling within the franchise area as defined in a franchise agreement unless prohibited by a private property owner from doing so; provided that such dwelling is in an area of density of at least twenty-five (25) dwelling units per cable mile. For purposes of this section, if a franchisee has not been granted the authority by an owner or associations of owners to extend its facilities to individual apartments, condominiums, and co-operative units within the interior of a multiple-unit building or complex of buildings, then any such multiple-unit building or complex of buildings shall be considered a single dwelling unit. Density per cable mile shall be computed by dividing the number of dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the dwelling units in such area in accordance with the franchisee's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access, and located within the public streets.

C. Notwithstanding anything herein to the contrary, service shall be required for new developments located adjacent to an area which already meets the residential

density requirement in subsection B, above, but only to the extent, in whole or in part, to which such development has been platted consistent with the density requirement in subsection B, and public utility facilities are being or have been extended.

Section 15-14. Technical Standards.

A. Any cable system within the City shall at minimum meet the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted including but not limited to digital transmission, HDTV or other advanced technologies. All television signals transmitted on a cable system shall include any closed circuit captioning information for the hearing impaired received by the franchisee's cable system. Antennas, supporting structures, and outside plant used in the system shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, county, City and/or utility laws, ordinances, rules and regulations.

B. All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, all applicable building codes, and all laws as hereinafter may be amended or changed.

C. As required by FCC rules, the franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with FCC requirements. The franchisee shall provide, upon written request, the proof of performance test results to the City within thirty (30) days after completion. At any time during the term of a franchise, the City shall have the right to inspect the cable system facilities in the streets during and after their construction to ensure compliance with the requirements of the franchise agreement, this Article, and FCC standards.

D. The franchisee shall notify the City within ten (10) days of franchisee's failure of proof of performance or other test required in subsection C, above.

E. A franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the preexisting facilities of any public utility, the preexisting cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals.

F. A franchisee shall provide access channels, facilities, and financial support, in accordance with the terms of a franchise.

Section 15-15. Access Channels and Facilities.

A. Applications for an initial or renewal franchise shall include proposals for the provision of access channels and equipment and facilities relating to such channels sufficient to meet community needs as determined by the City. Any franchisee granted an initial or renewal

franchise on or after the effective date hereof, shall, at minimum, provide the City for its exclusive use with two (2) activated access channels on the basic tier for, educational and/or governmental use. In addition, every franchisee shall make available, on two (2) separate channels, Lee County Board of Education programming and Lee County Government programming, including but not limited to, meetings of the Board of County Commissioners, to all subscribers in the City, provided such programming is available for transmission.

B. A City may, as provided in a franchise agreement, require franchisee to provide use of franchisee's studio equipment and technical services, at no cost to the City, for production of live and video-taped municipal programs, subject to reasonable availability and scheduling requirements of the franchisee.

C. The City may require a franchisee to provide equipment and other facilities and/or support in order to facilitate the City's operation of an educational or governmental access channel, as provided in a franchise.

D. As provided in a franchise, a franchisee may be required to provide, at no cost to the City, trained personnel to assist the City in production of live and video-taped municipal programs at locations other than the City's studio, or franchisee's studio as the case may be, as designated by the City.

E. Applications for an initial or renewal franchise may and, at the City's request, shall include proposals for the provision of an institutional network interconnecting City, educational institution, and/or other public facilities.

F. Applications for an initial or renewal franchise may and, at the City's request, shall include proposal for the interconnection of franchisee to any or all other franchised cable systems operating within the City or in areas adjacent to the City, provided that interconnection is technically feasible and franchisee and the other operator agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between franchisee and such other operator that is reasonable in light of the relative benefits and burdens, including consideration of support provided for educational and governmental access purposes.

G. A franchise may provide for a financial grant in lieu of some or all of the facilities, equipment, and services referenced in subsections 15-15.B, C, D and E. However, any such grant shall not be considered a fee or tax of any kind or a credit against such fee or tax.

Section 15-16. Franchise Fee.

A. A franchisee, as compensation for the privilege granted under a franchise for the use of the City's streets to construct and operate a cable system, shall pay to the City a franchise fee in an amount up to a maximum of either:

(1) Five percent (5%) of the franchisee's gross revenues derived directly or indirectly from the operation of its cable system within the City to provide cable services during the term of its franchise; or

(2) In the event the Communications Act or other applicable law is amended to permit the City to assess a franchise fee of a greater specific amount or on a broader revenue basis than that specified in subsection (1), above, the franchisee agrees to pay to the City the new amount after a public hearing in which the public and franchisee are given an opportunity to comment on the impact of the higher fee. In no event shall a franchisee pay a franchise fee greater than the maximum permitted by applicable law.

B. A franchisee shall pay the franchise fee due to the City on a quarterly basis. Payment for each quarter shall be made to the City not later than forty five (45) calendar days after the end of each calendar quarter.

C. A franchisee shall file with the City, on a quarterly basis with the payment of the franchise fee, a financial statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding quarter and a detailed explanation of the method of computation. The franchisee will bear the cost of the preparation of such financial statements.

D. Subject to applicable law, no acceptance by the City of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable.

E. The franchise fee payment is not a payment in lieu of any other tax, fee or assessment.

F. The City may, from time to time, but not more than annually, and upon reasonable notice, inspect, and audit any and all books and records of the franchisee, for the current and five (5) prior years, relevant to the determination of gross revenues and the computation of franchise fees due, and may recompute any amounts determined to be payable under the franchise. The cost of the audit will be borne by the franchisee if, as a result of the audit, the City determines that the franchisee has underpaid the franchise fees owed in an amount, equal to or exceeding two percent (2%) of the franchise fees actually paid excluding amounts underpaid due to miscoded accounts where the City has failed to advise the franchisee of an annexation. A franchisee shall make all books and records necessary to satisfactorily perform the audit readily available to the auditors at the system office in the City of Cape Coral, for inspection and copying.

G. In the event that a franchise fee payment is not received by the City on or before the due date set forth in subsection B, above, or is underpaid, the franchisee will pay a late charge of eighteen percent (18%) of the amount

of the unpaid or underpaid franchise fee payment, computed on an annual basis, provided, however, that such rate does not exceed the maximum amount allowed under Florida law. Any interest and/or late charge paid by franchisee is intended to be a charge incidental to the enforcing of a franchise within the meaning of Section 622 (g)(2)(D) of the Communications Act, 47 U.S.C. §542 (g)(2)(D), and may not be deducted from the franchise fee imposed by this Article or any franchise agreement.

H. When a franchise terminates for whatever reason, the franchisee shall file with the City within ninety (90) calendar days of the date its operations in the City cease a financial statement, certified by a certified public accountant or the franchisee's chief financial officer, showing the gross revenues received by the franchisee since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the franchisee's operations ceased. Payments under this subsection shall be due and payable within forty five (45) days of the date the determination of fees due to the City is made, and subject to late charges as described in subsection G, above.

I. Any transaction or arrangement which has the effect of circumventing payment of required franchise fee and/or evasion of payment of franchise fee by non-collection, non-reporting of gross revenues, collection of revenues by affiliates, bartering, or any other means which evade the actual collection of revenues subject to the franchise fee by franchisee is prohibited

Section 15-17. Reports and Records.

A. Within six (6) months of the close of its fiscal year, a franchisee shall provide the City an annual report that, at minimum, includes the following information:

(1) Upon request, a summary of the previous year's activities in development of the state of the art of cable systems and the system serving the City including but not limited to, services and products initiated or discontinued, new technologies, number of subscribers, homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the City, as well as rate and charge increases and/or decreases for the previous fiscal year. It is the obligation of the franchisee to include within this report any and all information necessary to evaluate franchisee's system as compared to the definition of "state of the art" as defined in Section 15-2.

(2) A financial statement, including a statement of sources of revenues for the franchise area. The statement shall be audited if franchisee has audited statements performed in its normal course of business. If not, the statement shall be certified by a certified public accountant, the franchisee's chief financial officer or other duly authorized financial officer of the franchisee. The statement shall

include notes that specify all significant accounting policies and practices upon which it is based.

(3) To the extent there have been changes from maps already filed by franchisee, available for inspection upon request, a copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the City. Upon request by the City, such maps shall be provided in digitized form at franchisee's expense, if franchisee has maps available in such form.

(4) Upon a request, a summary of subscriber or resident written complaints and/or complaints requiring a service call, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the City.

(5) Upon written request, a summary of the number of outages exceeding one (1) hour, including number of planned outages, number of outages during prime viewing hours (8:00 p.m. - 11:00 p.m. daily), and number of outages by duration including number of subscribers affected.

(6) Upon request, if the franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and, if the franchisee or its parent corporation's stock or ownership interests are publicly traded, a copy of its most recent annual report.

(7) Upon request, if the franchisee is a partnership, a list of the partners, including any limited partners, and their addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner, and the officers and directors of any parent corporation; and where the general partner or its parent corporation's ownership interests are publicly traded, a copy of its most recent annual report.

(8) Upon request, a list of all persons holding five percent (5%) or more ownership or otherwise cognizable interest in the franchisee pursuant to 47 C.F.R. 76.501.

(9) Upon request, a copy of the franchisee's rules and regulations applicable to subscribers of the cable system.

(10) Upon request, a report on the number of senior citizen, economically disadvantaged or handicapped subscribers receiving any rate discounts, if any, and the amount of any such discounts for

specific services if franchisee offers separate rates or discounts for those categories of subscribers.

(11) In the event of any changes, but no less than annually, a full schedule and description of all products, services, and equipment offer to cable subscribers, service hours and location of the franchisee's customer service office or offices available to subscribers, and a schedule of all rates, fees and charges for all product, services and equipment provided over the cable system.

(12) Annually, a report on the number of total subscribers served by the franchisee in the cable system.

B. Upon written request by the City, a franchisee shall provide, on an annual basis, the following documents to the City as received or filed, without regard to whether the documents are filed by the franchisee or an affiliate:

(1) Annual report of the franchisee or its parent or any affiliate of franchisee which controls franchisee and issues an annual report;

(2) Copyright filings reflecting the operation of the system;

(3) FCC Forms 325 and 395A for the system, or their successor forms;

(4) Any and all pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted by or on behalf of the franchisee to the FCC, SEC or any state or federal agency, court or regulatory commission which filings may impact the franchisee's operation of the franchisee's cable system in the City or that may impact the City's rights or obligations under this Article of the franchise agreement issued pursuant to this Article and any and all responses, if any, to the above mentioned filings.

(5) Any and all notices of deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the system, franchisee, or any affiliate of franchisee, provided, however, that any such notice or documents relating to an affiliate of franchisee need be provided only to the extent the same may concern franchisee's operations in the City. For example, a notice that an affiliate which has a management contract for the City's system was not in compliance with the FCC's EEO requirements with respect to its activities in the City would be deemed to affect or bear on operations in the City.

(6) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

(7) Notwithstanding anything to the contrary, the franchisee agrees to provide the City, within thirty (30) days of filing or receipt of such, any document filed with or received from a governmental agency that may adversely impact franchisee's obligations under its franchise with respect to the construction, operation or maintenance of the franchisee's cable system or the City's rights with respect thereto.

C. Upon reasonable notice and during normal business hours, a franchisee shall make a complete set of books and records available for inspection and audit by the City, for purposes of ascertaining compliance with requirements of this Article and the franchise agreement.

D. Upon reasonable notice and during normal business hours, a franchisee shall make available for inspection by the City a copy of updated maps depicting the location of all cable plants, showing areas served and locations of all trunk lines and feeder lines in the City.

E. Any materials requested by the City which are deemed proprietary and confidential under applicable law shall be made available to the City for review and inspection (but not copying or removal), but shall not be required to be filed with the City unless such filing is required by applicable law. To the extent consistent with applicable law, the City shall maintain the confidentiality of information provided by franchisee, when designated as proprietary and confidential by franchisee.

Section 15-18. Customer Service Requirements.

A. A franchisee shall at a minimum maintain all parts of its system in good condition and in accordance with FCC standards or such more stringent standards provided in this Article or a franchise agreement. Sufficient employees shall be retained to provide safe, adequate and prompt service for all of its customers and facilities, as set forth in this Article and a franchise agreement. The customer service requirements set forth herein are applicable to all services subject to the Article. A franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Fifty Dollars (\$350.00) per day or part thereof that the violation continues.

B. A franchisee shall maintain at least one (1) conveniently located business office and service center within five (5) miles of the City limits, to which subscribers may telephone without incurring added message units or toll charges. This business office shall be open at minimum during normal business hours, Monday through Friday, and some weekend and/or evening hours. Further, franchisee shall locate, construct, design, staff, operate and maintain said office(s) so as to provide all subscribers, including but not limited to those subscribers who may be elderly, disabled or otherwise impaired, with access to its office, in accordance with applicable law. The office shall make available for all customers sufficient covered waiting areas and adequate seating capacity in an air conditioned space. Such office must

have adequate counter personnel to keep wait time to a reasonable length. A franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Fifty Dollars (\$350.00) per day or part thereof that the violation continues.

C. A franchisee shall maintain a listed local, toll-free telephone number under the name by which franchisee is doing business in the City, and employ a sufficient number of telephone lines, personnel and answering equipment or service to allow reasonable access by subscribers and members of the public to contact the franchisee on a full-time basis, twenty-four (24) hours per day, seven (7) days per week including holidays. Knowledgeable, qualified franchisee representatives shall be available to respond to customer telephone inquiries, at a minimum, fifty-five (55) hours per week, including from 9:00 a.m. to 5:00 p.m., Monday through Friday, plus a minimum of eight (8) hours in the course of Saturday and Sunday. In general, the obligation to provide customer service responses during the aforesaid hours shall not apply on national holidays. Notwithstanding anything to the contrary, at no time shall response to customer service requests not be available for any period in excess of forty-eight (48) hours. A franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day or part thereof that the violation continues.

D. A franchisee shall answer all customer service and repair telephone calls made under normal operating conditions within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Customers shall receive a busy signal less than three percent (3%) of the time. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. A franchisee shall maintain performance data necessary to confirm compliance with the standards set forth herein, and such records shall be made available for review and inspection by the City or its designee pursuant to Section 15-17. Such records shall be maintained at the franchise level, or for all the franchise areas in the same regional division of the franchisee. A franchisee's material failure to comply with this subsection may result in a fine in the amount Three Hundred Fifty Dollars (\$350.00) per day or part thereof that the violation continues.

E. A franchisee shall employ and maintain sufficient qualified personnel and/or equipment to be available:

- (1) To accept payments;
- (2) To exchange or accept converters or other equipment during normal business hours;
- (3) To receive subscriber complaints or requests for service or repairs on a full-time basis, twenty-four (24) hours per day, seven (7) days per week;
- (4) To undertake normal repairs by the next business day;

(5) To enable a service technician to respond to service calls between 6:00 a.m and midnight, under normal operating conditions, seven (7) days a week including holidays, when more than five (5) subscribers served from the same nearest active electronic device, such as an amplifier or node, call with the same technical complaint.

A franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day or part thereof that the violation continues.

F. A franchisee must meet each of the following standards no less than ninety-five (95) percent of the time under normal operating conditions as measured on a quarterly basis:

(1) Standard installation work shall be performed within seven (7) business days after an order has been placed except in those instances where a subscriber specifically requests an installation date beyond the seven (7) business day period. "Standard" installations are up to one hundred and twenty-five (125) feet from the existing distribution system. If scheduled installation is neither started nor completed as scheduled, the subscriber shall be telephoned by an employee of the franchisee the same day.

(2) A franchisee shall respond to service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known to franchisee. Other service problems shall be responded to promptly and in no event later than the next business day after the problem becomes known to the franchisee.

(3) The appointment window alternatives made available for installations, service calls, repairs, and other installation activities shall be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the subscriber, "all day." These options shall be clearly explained to the customer at the time of scheduling.

(4) A franchisee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.

(5) If at any time an installer or technician is running late for a scheduled appointment, an attempt to contact the customer shall be made and the appointment rescheduled as necessary at a time which is convenient for the customer.

A franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day or part thereof that the violation continues.

G. A franchisee shall institute and maintain a program providing a reasonable subscriber credit for missed appointments. The City's determination that franchisee's program is unreasonable and/or franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred Dollars (\$100) per day or part thereof that the violation continues.

H. Disconnection.

(1) Voluntary Disconnection.

(a) A subscriber may terminate service at any time.

(b) A franchisee shall promptly disconnect any subscriber who so requests from the cable system of the franchisee. No period of notice prior to voluntary termination of service may be required of subscribers by any franchisee. No charge may be imposed by any franchisee for such voluntary disconnection, or for any cable services delivered after the date of the requested disconnection.

(c) A franchisee may hold a subscriber responsible for the return of equipment of the franchisee which has been provided for the subscriber's use. The franchisee may request the subscriber to return the equipment to franchisee's office but, if the subscriber requests, franchisee shall pick up the equipment at the subscriber's premises, subject to paragraph (b), above.

(d) Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after any customer premises equipment including all converters but excluding wiring have been recovered by the franchisee. The refund process shall take a maximum of forty-five (45) days from the date equipment is returned to franchisee to the date the customer receives the refund.

(2) Involuntary Disconnection. If a subscriber fails to pay a monthly subscriber or other fee or charge, the franchisee may disconnect the service outlet of the subscriber; however, such disconnection shall not be effected until twenty-five (25) days after the due date of the monthly subscriber fee or other charge, and ten (10) days advance written notice of intent to disconnect to the subscriber in question. If the subscriber pays within twenty-five (25) days of the due date and after notice of disconnection has been given, the franchisee shall not disconnect. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate service. A franchisee reserves the right to deny service to any customer who has been repeatedly disconnected for non-

payment of services to the extent such rights are consistent with applicable state and federal Law.

(3) With respect to any disconnection, whether requested or involuntary, a franchisee shall comply with the rules and regulations of the FCC and applicable law with respect to ownership, sale, removal and abandonment of home wiring. Failure to comply with such rules including, but not limited to providing applicable notice to subscribers and property owners shall be considered a violation of this Article.

A franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day or part thereof that the violation continues.

I. A franchisee shall intentionally interrupt service only for good cause and for the shortest time possible and shall use its best efforts to minimize the number of service interruptions between 6:00 p.m. and 11:00 p.m. A franchisee shall maintain a written log for all intentional service interruptions. A franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Dollars (\$300) per day or part thereof that the violation continues.

J. A franchisee shall provide the City Manager or his/her designee telephone number(s) and/or pager number(s) to enable the City Manager or designee to contact at any time a person responsible for the operation of the system of Cape Coral. A franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Dollars (\$200.00) per day or part thereof that the violation continues.

K. A franchisee shall cause all of its field employees to wear a picture identification badge indicating employment by franchisee. This badge shall be clearly visible to the public. All company vehicles shall display the company name and logo, if any, in a manner clearly visible to the public. Contractor vehicles shall display the contractor name, telephone number, and contractor license number, as required by applicable law. Employees of contractors working for a franchisee shall wear a picture identification badge. A franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred Dollars (\$100.00) per day or part thereof that the violation continues.

L. A franchisee shall develop written procedures for the investigation and resolution of all subscriber or City resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be provided upon request to the City Manager or his designee. The good faith or lack thereof of the franchisee in attempting to resolve subscriber and resident complaints in a fair and equitable manner shall be considered in connection with the renewal application of the franchisee, to the extent consistent with applicable law. A franchisee shall maintain a complete list of all complaints requiring a service call not resolved within

seven (7) days of receipt and the measures taken to resolve those complaints. This list, for no longer than the previous year, shall be provided to the City upon request. A franchisee shall also maintain a list of all written complaints received, which list, for no longer than the previous year, shall be available to the City upon request. A franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Dollars (\$300.00) per day or part thereof that the violation continues.

M. Upon reasonable request by the City, a franchisee shall permit the City Manager or his/her designee to inspect and test the technical equipment and facilities upon reasonable notice not to be less than two (2) business days, and accompanied by an employee of the franchisee. A franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Fifty Dollars (\$350.00) per day or part thereof that the violation continues.

N. A franchisee shall abide by the following requirements governing communications with customers, bills and refunds:

(1) Each franchisee shall provide to subscribers written information in each of the following areas at the time of installation, at least once annually, and at any future time upon request by the subscriber:

- (a) How to use the cable service;
- (b) Installation and service maintenance policies;
- (c) All products and services offered;
- (d) Prices and service options;
- (e) Channel positions of programming carried on the system;
- (f) The franchisee's procedures for the receipt and resolution of customer complaints, the address of the franchisee and telephone number to which complaints may be reported, and the hours of operation;
- (g) The availability and costs of a "lock-out" device and/or other parental control mechanisms, if any;
- (h) The information regarding franchisee's collection and subscriber privacy policies.
- (i) A franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred Dollars (\$100.00) per day or part thereof that the violation continues.

(2) To the extent a franchisee's billing schedule allows, each franchisee shall provide written

notice in or on its monthly billing, at the request of the City, of any City meeting regarding requests or applications by the franchisee for renewal, transfer or modification of its franchise. The City shall make such a request in writing, with reasonable notice prior to the mailing of any billing by franchisee, such that franchisee's regular billing cycle shall not be interrupted. In addition, franchisee shall, consistent with applicable law, provide written notice in or on its monthly billing of any change in service, rates or charges to subscribers unless such written notification takes place by separate mailing or other means. Said notices shall be made at franchisee's expense and said expense shall not be considered part of the franchise fee assessed pursuant to this Article and shall not be considered part of the franchise fee, as defined in Section 622 of the Communications Act, 47 U.S.C. § 542. A franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Fifty Dollars (\$350.00) per day or part thereof that the violation continues.

(3) A franchisee's bills shall be clear, concise and understandable to subscribers. A franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred Dollars (\$100.00) per day or part thereof that the violation continues.

(4) Credits for service or refunds shall be issued no later than thirty (30) days after the next billing cycle of the customer following the determination that a credit or refund is warranted. A franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred Dollars (\$100.00) per day or part thereof that the violation continues.

(5) A franchisee shall provide subscribers, the City Council, and the City Manager with at least thirty (30) days' advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of service or services offered over the cable system whenever practicable. A franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred Dollars (\$100) per day or part thereof that the violation continues.

O. Except in the case of a system malfunction, upon a subscriber's request, a franchisee shall provide a refund or credit to the account of the subscriber, prorated on a daily basis, for any period of four (4) hours or more within a twenty-four (24) hour period during which a subscriber experienced an interruption of service or substantial impairment of service, whether due to a system malfunction or other cause. No refunds shall be due for service interruptions directly related to a rebuild, upgrade or routine maintenance of the cable system which is planned, noticed properly to subscribers, and occurs during a time other than between 6:00 p.m. and 11:00 p.m. and lasts for four (4) hours or less. A franchisee's material failure to comply with this subsection may result in a fine

in the amount of Two Hundred Dollars (\$200.00) per day or part thereof that the violation continues.

P. Billing.

(1) The first billing statement of the franchisee after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.

(2) The billing statement of the franchisee must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Statements shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(3) Any balance not received within ten (10) days after the due date may be assessed an administrative charge. However, in no event shall administrative charges for an overdue balance accumulated against any individual subscriber exceed twenty-five dollars (\$25.00). The charge shall appear on the billing statement for the following month. Any administrative charge applied to unpaid bills shall be subject to regulation by the City consistent with applicable law. Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the franchisee, its employees, or contractors, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.

(4) The franchisee must notify the subscriber at the time of installation, and annually thereafter, that payment can be remitted in person at the office of the franchisee in the City and inform the subscriber of the address of that office where payment can be made.

A franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred Dollars (\$100) per day or part thereof that the violation continues.

Q. No charge may be made for any service or product which the subscriber has not affirmatively requested by name. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing. A franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred Dollars (\$100) per day or part thereof that the violation continues.

R. The franchisee shall, upon request, certify in writing to the City, based upon internal due diligence by the franchisee, that to the best of franchisee's knowledge it is in substantial compliance with the standards set forth in this Section. At the request of the City, the franchisee shall submit such documentation as may be required to demonstrate compliance with this section. This

documentation shall be submitted within forty five (45) days of the receipt by the franchisee of the City's request.

S. Responsibility for the administration of this Article, and any franchise granted pursuant to this Article, and for the resolution of all complaints referred to the City against a franchisee regarding the quality of service, equipment malfunctions, and related matters, is hereby delegated to the City Manager (who can in turn designate to a City employee), who is empowered, among other things, to settle, or compromise any controversy arising from operations of the franchisee, on behalf of the City, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is unsatisfactory for whatever reason, the City Manager or his/her designee, herein referred to jointly as City Manager, shall have the power to require the franchisee to provide service consistent with the terms of the franchise, if in the opinion of the City Manager such request for service is reasonable. Any person aggrieved by a decision of the City Manager, including the franchisee, may appeal the matter to the City Council for hearing and determination. The City Council may accept, reject or modify the decision of the City Manager. No adjustment, settlement, or compromise, whether instituted by the City Manager or by the City Council shall be contrary to the provisions of this Article or any franchise agreement issued pursuant to this Article, and neither the City Manager nor the City Council, in the adjustment, settlement, or compromise of any controversy, shall have the right or authority to add to, modify or delete any provision of this Article or of the franchise, or to interfere with any rights of subscribers or any franchisee under applicable federal, or state law or private contract.

T. Fines.

(1) The fines to which a franchisee is subject as set forth in this section are to be assessed by the City Council on a per violation basis, with each day of a continuing violation constituting a separate violation. Where a credit required by this section is not possible because service has been terminated, franchisee shall issue a refund to the former subscriber for the appropriate amount.

(2) Prior to the City Council's assessment of a fine pursuant to this Article, the City Manager shall mail to the franchisee a written notice, by hand delivery or certified or registered mail, of the proposed fine, specifying the violation at issue. The franchisee shall have thirty (30) days from the date of receipt of the written notice to file a written response to the notice of the City Manager or his/her designee as to whether the violation has been cured. The written response of the franchisee shall be signed by management level personnel of franchisee and all statements contained therein shall be regarded as material representations of the franchisee to the City.

(3) The City Council shall consider any justification or mitigating factor advanced in the written response of the franchisee, including but not limited to rebates or credits to the subscriber or a cure of the violation. The City Council may not assess any fine if the franchisee has reasonably resolved the complaint or cured the violation within a reasonable time frame. However, said subscriber may be entitled to a credit or refund as provided herein.

(4) Subsequent to the notice of proposed fine to franchisee, and consideration of the response of the franchisee, if any, the City Council may, after a public hearing at which franchisee shall have an opportunity to be heard, issue an assessment of fine. The fine shall be paid within thirty (30) days of written notice to the franchisee or, if franchisee challenges the assessment in a court of competent jurisdiction, within thirty (30) days of a final non-appealable decision that the assessment is valid. If said refund, credit or fine is not paid by franchisee within such thirty (30) day period, as the case may be, the City may, at its discretion, withdraw immediately the amount thereof from the franchisee's security fund. Upon such withdrawal, the City shall notify franchisee of the withdrawal amount, after which franchisee shall have ten (10) days from the date of such notice to deposit in the security fund an amount sufficient to restore the security fund to the amount specified in the franchise agreement. This fine shall constitute liquidated damages to the City for the violation and the City may enforce payment of the fine in any court having jurisdiction. It is the intent of the City to determine fines as a reasonable estimate of the damages suffered by the City and/or its subscribers, whether actual or potential, which may include, without limitation, increased costs of administration and other damages difficult to measure.

(5) A franchisee may appeal any decision of the City Manager or his/her designee directly to the City Council within thirty (30) days of notice of the decision to the franchisee.

(6) Intentional material misrepresentation by a franchisee in any response to a notice of proposed credit, refund and/or fine, whether oral or written, shall be considered a material breach of the franchise agreement, subject to a penalty of no less than Five Thousand Dollars (\$5,000.00) in liquidated damages to the City, and shall be grounds for franchise revocation.

(7) In addition to complying with the customer service standards set forth in this Article or in any franchise issued pursuant to this Article, a franchisee shall, at a minimum, comply with all customer service standards applicable to cable systems of the FCC and any other applicable federal or state law concerning customer service standards, consumer protection, and unfair or deceptive trade practices.

(8) The City expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfer of any franchise, to the extent not inconsistent with applicable law.

Section 15-19. Subscriber Privacy.

A. A franchisee shall at all times protect the privacy of all subscribers to the full extent required by Section 631 of the Communications Act, 47 U.S.C. § 551 and state law. A franchisee shall not condition subscriber or other service on the subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the subscriber's explicit consent. No penalties or extra charges may be invoked by the franchisee for a subscriber's failure to grant consent.

B. Unless otherwise permitted by federal or state law, neither the franchisee nor its agents or employees shall, without the prior and specific written authorization of the subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any subscriber or subscribers, or any information which identifies the individual viewing habits of any subscriber or subscribers.

Section 15-20. Discrimination Prohibited.

A. No franchisee may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant any illegal undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor subject any such persons or group of persons to any illegal undue prejudice or any disadvantage. A franchisee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin or marital status, except for discounts for senior citizens, the economically disadvantaged or handicapped that are applied in a uniform and consistent manner. A franchisee may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.

B. A franchisee shall not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.

C. A franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, disability, national origin, or marital status. The franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

Section 15-21.

Use of Streets.

A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a franchisee shall be done in compliance with City requirements under permits issued for work by the proper officials of the City, and shall be done in such manner as to give the least inconvenience to the inhabitants of the City. Nothing herein shall be construed to exempt a franchisee from compliance with the provisions of the Code of Ordinances of the City of Cape Coral or from payment of the appropriate fees established pursuant to said Code.

B. A franchisee shall, at its own cost and expense, and in a manner approved by the City, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also prepare, maintain and provide to the City Engineer full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways, and easements of the City. These maps shall be available to the City Engineer.

C. Except to the extent required by law, a franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the City by reason of traffic conditions, public safety, street construction, street resurfacing or widening, change of street grade, installation or sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal or public utility improvements; provided, however, that the franchisee shall, in all such cases, have the privilege of abandoning any property in place. A franchisee shall do so at its expense to the extent other users of the rights-of-way are so responsible, consistent with applicable law.

D. A franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the City, in which case no such payment shall be required. The franchisee shall be given not less than five (5) business days' advance notice to arrange for such temporary wire changes.

E. A franchisee shall, upon notice to the City of not less than 7 days, emergency situations excepted, have the authority to trim the trees or other natural growth upon and overhanging the streets so as to prevent the branches of such trees from coming in contact with the wires, cables and other equipment of the franchisee, except that, at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the franchisee.

F. A franchisee shall use, with the owner's permission, existing underground conduits (if applicable) or overhead utility facilities whenever feasible and if

available on reasonable terms and conditions. Copies of agreements between a franchisee and third party for use of conduits or other facilities shall be filed with the City upon request provided that the franchisee shall have the right to redact proprietary and confidential information in such agreements as it pertains to financial arrangements between the parties.

G. All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The City may issue such generally applicable rules and regulations concerning the installation and maintenance of a cable system installed in, on, or over the streets, as may be consistent with this Article and the franchise agreement.

H. All safety practices required by law shall be used during construction, maintenance and repair of a cable system. A franchisee shall not place facilities, equipment or fixtures where they will interfere with any preexisting gas, electric, telephone, water, sewer or other utility facilities, or obstruct or hinder in any manner the preexisting facilities of various utilities serving the residents of the City of their use of any street or any other public right of way.

I. A franchisee shall, at all times:

(1) Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the City's Building Code and Electrical Safety Ordinances and any other applicable Building or Electrical Safety Code, and in such manner that they will not interfere with any installations of the City.

(2) Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located.

J. On streets where electrical or telephone utility wiring is located underground, either at the time of initial construction of a cable system or at any time thereafter, a franchisee's cable shall also be located underground at the franchisee's expense only if the utilities in the area are also required to relocate their facilities underground at their expense or at such time other utilities elect to locate underground. Between a street and a subscriber's residence, a franchisee's cable must be located underground if both electrical and telephone utility wiring are located underground. The City shall encourage, to the extent feasible, that the public utility and the franchisee cooperate in opening up trenches and making such trenches available to all parties with the understanding that the costs of opening and refilling of such trenches would be shared proportionately by all users of such trenches.

K. In the event the use of any part of a cable system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street without complying with the requirements of this Article or a franchise agreement, or the franchise has been terminated, canceled or expired, without right of renewal, the franchisee, within thirty (30) days after written notice by the City, shall commence removal from the streets of all such property as the City may require.

L. The City may extend the time for the removal of a franchisee's equipment and facilities for a period not to exceed one hundred eighty (180) days, and thereafter such equipment and facilities may be deemed abandoned, unless the franchisee is diligently pursuing the removal.

M. In the event of such removal or abandonment, the franchisee shall restore the area to as good a condition as prior to such removal or abandonment.

Section 15-22. Enforcement Remedies.

A. In addition to any other remedies available at law or equity or provided herein, the City may apply any one or combination of the following remedies in the event a franchisee violates this Article, its franchise agreement, applicable state or federal law, or applicable local law or order:

(1) Impose liquidated damages in such amount, whether on a per-diem, per-incident, or other measure of violation, as provided in this Article or in a franchise agreement. Payment of liquidated damages by the franchisee will not relieve the franchisee of its obligation to comply with the franchise agreement and the requirements of this Article.

(2) Impose as liquidated damages a fine in an amount not less than One Thousand Dollars (\$1,000) per day for failure to obtain a franchise agreement from the City pursuant to this Article.

(3) Impose as liquidated damages a fine in the amount of Three Hundred Fifty Dollars (\$350.00) per day per violation for material failure to comply with any provision of this Article, except as otherwise provided for in Section 15-18 hereof or as otherwise provided for in a franchise agreement.

(4) In the event of a material failure to comply with the provision of this Article, revoke the franchise pursuant to the procedures specified in Section 15-25 hereof.

(5) In addition to or instead of any other remedy, the City may seek legal or equitable relief from any court of competent jurisdiction.

B. In determining which remedy or remedies are appropriate, the City shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required

in order to prevent further violations, and such other matters as the City determines are appropriate to the public interest.

C. Notwithstanding anything to the contrary, a franchisee's failure to comply with Section 15-13 or 15-15 hereof may result in the assessment of liquidated damages in the amount of Seven Hundred Fifty Dollars (\$750.00) per day for each day such violation continues.

D. Failure of the City to enforce any requirements of a franchise agreement or this Article shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

E. In any proceeding wherein there exists an issue with respect to a franchisee's performance of its obligations pursuant to this Article, the franchisee shall provide such information as it may have concerning its compliance with the terms of this Article. The City Council may find a franchisee that does not demonstrate compliance with the terms and conditions of this Article in default and apply any one or combination of the remedies otherwise authorized by this Article.

F. Notwithstanding anything to the contrary, and notwithstanding being subjected to a fine or refund requirement, franchisee shall be obligated to cure, or take all reasonably practicable steps to cure, any violation of this Article or of any franchise agreement granted hereto within thirty (30) days after receipt of notice from the City of the alleged violation. If the alleged violation is not cured within such period, the City may exercise all rights and remedies available pursuant to this Article, or applicable law, or the franchise agreement.

Section 15-23. Renewal of franchise.

Renewal shall be conducted in a manner consistent with Section 626 of the Communications Act, 47 U.S.C. § 546. To the extent such additional requirements are consistent with applicable law, the following requirements shall apply:

A. Upon completion of the review and evaluation process set forth in Section 626(a)(1)(2) of the Communications Act, 47 U.S.C. § 546, should that process be invoked, the City may notify the franchisee, by certified or registered mail that it may file a renewal application in the form of a renewal proposal. The notice shall specify the information to be included in the renewal proposal and the deadline for filing the application, which shall be no earlier than thirty (30) calendar days following the date of the notice.

(1) The application shall comply with the requirements of Section 15-08 hereof to the extent specifically applicable to franchise renewals and provide the specific information requested in the notice. If the franchisee does not submit a renewal application by the date specified in the City's notice to the franchisee given pursuant to this subsection,

the City may take such action as appropriate under law.

(2) Upon receipt of the renewal application, the City shall publish notice of its receipt and make copies available to the public. The City, following prior public notice, may hold one or more public hearings on the renewal application.

B. In the event a public hearing on the renewal application is held, or in the event that the City Council considers the renewal application without a public hearing, the City Council may either:

(1) Pass an ordinance approving the proposed franchise agreement and thereby renew the franchise; or

(2) Only after a public hearing properly noticed, pass a resolution that makes a preliminary assessment that the franchise should not be renewed.

C. If a preliminary assessment is made that a franchise should not be renewed, at the request of the franchisee or on its own initiative, the City will commence a proceeding in accordance with Section 626(c) of the Communications Act, 47 U.S.C. § 546(c) to address the issues set forth in Section 626(c)(1)(A)-(D) of the Communications Act, 47 U.S.C. § 546(c)(1)(A)-(D). Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of § 546 shall be based on one or more adverse findings made with respect to the factors described in § 546(c)(1)(A)-(D), pursuant to the record of proceedings under § 546(c). The City shall not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under § 546(c)(1)(A) or on events considered under § 546(c)(1)(B) unless the City has provided the franchisee with notice and opportunity to cure, or in any case in which it is documented that the City has waived its right to object, or the franchisee gives written notice of a failure or inability to cure and the City fails to object within a reasonable time after receipt of such notice.

D. Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in Section 626(a) of the Communications Act, 47 U.S.C. § 546(a), shall be deemed an informal proposal for renewal and shall be governed in accordance with Section 626(h) of the Communications Act, 47 U.S.C. § 546(h). The City may hold one or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the City Council shall determine whether the franchise should be renewed and the terms and conditions of any renewal.

E. If the City Council grants a renewal application, the City and the franchisee shall agree on the terms of a franchise agreement, pursuant to the procedures specified in subsections 15-08E through H, above, before such renewal becomes effective.

F. If renewal of a franchise is lawfully denied, the City may acquire ownership of the cable system or effect a transfer of ownership of the system to another person upon approval of the City Council. Any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself. The City may not acquire ownership of the system while an appeal of a denial for renewal is pending in any court pursuant to 47 U.S.C § 546(e).

G. If renewal of a franchise is lawfully denied and no appeal to a court is pending, and the City does not purchase the cable system or approve or effect a transfer of the cable system to another person, the City may require the former franchisee to remove its facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former franchisee's and/or its surety's expense.

Section 15-24. Transfers.

A. No transfer of a franchise shall occur without prior approval of the City, which shall not be unreasonably withheld.

B. An application for a transfer of a franchise received by the City on or after the effective date hereof shall meet the requirements of Section 15-08 hereof, and shall provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. The application shall provide, at a minimum, the information required in sub-subsections 15-08.E(1) through (5) with respect to the proposed transferee. The information required in sub-subsections 15-08.E(6) through (13) shall also be provided whenever the proposed transferee expects material changes to occur in those areas.

C. In making a determination on whether to grant an application for a transfer of a franchise, the City Council shall consider the legal, financial, and technical capacity of the transferee to operate the system; whether the incumbent cable operator is in substantial compliance with the material terms of its franchise agreement and this Article and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee would adversely affect cable services to subscribers, or otherwise be contrary to the public interest.

D. No application for a transfer of a franchise shall be granted unless the transferee agrees in writing, in the form of an affidavit signed by a duly authorized officer of the transferee, that it will abide by and accept all terms of this Article and the franchise agreement, and that it will assume the obligations and liabilities of the previous franchisee to the City under this Article and the franchise agreement.

E. Approval by the City of a transfer of a franchise does not constitute a waiver or release of any of the rights of the City under this Article or the franchise agreement, whether arising before or after the date of the transfer.

Section 15-25. Revocation or termination of franchise.

A. A franchise may be revoked by the City Council for a franchisee's material failure to construct, operate or maintain the cable system as required by this Article or the franchise agreement, or for any other material violation of this Article or material breach of the franchise agreement. To invoke the provisions of this subsection A, the City shall give the franchisee written notice, by certified mail at the franchisee's last known address, that the franchisee is in material violation of this Article or in material breach of the franchise agreement and describing the nature of the alleged violation or breach with specificity. If within thirty (30) calendar days following receipt of such written notice from the City to the franchisee, the franchisee has not cured such violation or breach, or has not commenced corrective action and such corrective action is not being actively and expeditiously pursued, the City may give written notice to the franchisee of its intent to revoke the franchise, stating its reasons.

B. Prior to revoking a franchise under subsection A hereof, the City Council shall hold a public hearing, upon thirty (30) calendar days' notice, at which time the franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the City Council may determine whether to revoke the franchise based on the evidence presented at the hearing and other evidence of record. If the City Council determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the franchisee.

C. Notwithstanding subsections A and B hereof, any franchise may, at the option of the City, following a public hearing before the City Council, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver or trustee has fully complied with the terms and conditions of this Article and the franchise agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Article and the franchise agreement.

D. In the event of foreclosure or other judicial sale of a significant part of the facilities, equipment or property of a franchisee's system in the public rights-of-way, the City may revoke the franchise, consistent with the procedures of subsections A and B hereof, including a public hearing before the City Council, by serving notice upon the franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges of the franchisee will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

(1) The City has approved the transfer of the franchise to the successful bidder; and

(2) The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the franchise agreement and this Article.

E. If the City revokes a franchise, or if for any other reason a franchisee abandons, terminates or fails to operate or maintain service to its subscribers for a period of six (6) months, the following procedures and rights are effective:

(1) The City may require the former franchisee to remove its facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former franchisee's and/or its surety's expense.

(2) The City, by resolution of the City Council, may acquire ownership, or effect a transfer, of the cable system at an equitable price, consistent with applicable law.

(3) If a cable system is abandoned by a franchisee, the City may sell, assign or transfer all or part of the assets of the system.

F. Where the City has issued a franchise specifically conditioned in the franchise agreement upon the completion of construction, system upgrade or other specific obligation by a specified date, failure of the franchisee to complete such construction or upgrade, will result in the automatic forfeiture of the franchise without further action by the City where it is so provided in the franchise agreement, unless the City, at its discretion and for good cause demonstrated by the franchisee, grants an extension of time.

G. Except as provided in subsection F, no adverse action against a franchisee may be taken by the City pursuant to this section except as consistent with the procedures set forth in subsections A and B hereof.

Section 15-26. Continuity of Service Mandatory.

A. It is the right of all subscribers to receive all available services requested from the franchisee as long as their financial and other obligations to the franchisee are satisfied.

B. In the event of a termination or transfer of a franchise for whatever reason, the franchisee shall ensure that all subscribers receive continuous, uninterrupted service. The franchisee shall cooperate with the City to operate the system for a temporary period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six (6) months without the franchisee's written consent. During such period the cable system shall be operated under such terms and conditions as the City and the franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and that will provide reasonable compensation to the cable operator.

C. In the event a franchisee fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as the franchisee restores service under conditions consistent with the terms of the franchise or until a permanent operator is selected. If the City is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the City for all costs or damages resulting from the franchisee's failure to perform that are in excess of the revenues from the system received by the City. Additionally, the franchisee will cooperate with the City to allow City employees and/or City agents free access to the franchisee's facilities and premises for purposes of continuing system operation.

Section 15-27. Rates.

A. Nothing in this Article shall prohibit the City from regulating rates for cable services to the full extent permitted by law.

B. Any rate or charge established for cable service, equipment, repair or installation shall be reasonable to the public and in compliance with FCC guidelines. Compliance with applicable laws and regulations shall be considered reasonable. Upon written request from the City or its agent, a franchisee shall provide all requested data, records and documentation to show the reasonableness of the rates as required by FCC regulations or other applicable law. Where such information is designated proprietary and confidential, it shall not be copied or removed or otherwise subject to public inspection, to the extent the City is permitted to protect such information from public inspection under applicable law.

C. The City's regulation of rates as permitted under applicable law, shall be consistent with Federal Communications Commission cable rate regulation standards or other applicable law in effect at the time. A franchisee shall notify the City of any changes in rates or service no less than thirty (30) days prior to the effective date of such change. Unless otherwise prohibited by applicable law, the City may require the franchisee to notify each subscriber of such changes, by placing an announcement of not less than one quarter page in a newspaper of general circulation and/or via the cable

system, or by written notice to the subscriber, or such other reasonable means consistent with applicable law. At any hearing conducted by the City in the exercise of any rate regulatory authority, the franchisee and members of the public will be given an opportunity to present their respective views on the proposed rates. Upon conclusion of the public hearing, the City Council shall decide the matter by majority vote and adopt a Resolution taking such action and providing such relief as is appropriate and authorized by Federal Communications Commission rate regulation standards or other applicable law. The resolution shall set forth complete findings of fact and conclusions regarding all of the basic elements considered in the City Commission's determination.

Section 15-28. Performance Evaluation.

The City will conduct periodic performance evaluations of a franchisee as the City, in its sole discretion, determines is necessary. A franchisee shall cooperate with these evaluations reasonably and in good faith. If the City implements a survey of cable subscribers in connection with a performance evaluation, the City and franchisee may agree in a franchise agreement that franchisee shall distribute the City's questionnaire to its subscribers at the franchisee's expense.

Section 15-29. Administration.

A. The City Manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Article and franchise agreements on behalf of the City. The Manager shall be empowered to take all administrative actions on behalf of the City, except for those actions specified in this Article that are reserved to the City Council. The Manager may recommend that the Council take certain actions with respect to a franchise or franchisee. The Manager shall keep the Council apprised of developments in the cable industry and provide the Council with assistance, advice and recommendations as appropriate.

B. Subject to federal and state law, the City Council shall exercise the sole authority of the City to regulate rates for cable services, grant franchises, authorize the entering into of franchise agreements, modify franchise agreements, renew or deny renewal of franchises, revoke franchises, and authorize the transfer of a franchise.

Section 15-30. Force majeure.

In the event a franchisee's performance of or compliance with any of the provisions of this Article or the franchisee's franchise agreement is prevented by a cause or event not within the franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Article and any franchise agreement granted or renewed hereunder, causes or events not within a franchisee's

control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a franchisee's control, and thus not falling within this section, shall include, without limitation, the franchisee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of the franchisee's directors, officers, employees, contractors or agents.

Section 15-31. Applicability.

This Article shall be applicable to all cable franchises granted, transferred, modified, or renewed on or after its effective date, and shall apply to all cable franchises granted prior to the effective date of this Article, to the full extent not inconsistent therewith.

Section 15-32. Municipal cable system ownership authorized.

A. To the full extent permitted by law, the City may acquire, construct, own, and/or operate a cable system.

B. Nothing in this Article shall be construed to limit in any way the ability or authority, if any, of the City to acquire, construct, own, and/or operate a cable system to the full extent permitted by law or consistent with the terms of a franchise.

Section 15-33. Reservation of Rights.

A. The City reserves the right to amend this Article as it shall find necessary in the lawful exercise of its police powers.

B. Any additional regulations adopted by the City shall be incorporated into this Article and complied with by all franchisees within thirty (30) days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable law, or inconsistent with an existing franchise.

C. The City reserves the right to exercise the power of eminent domain to acquire the property of a franchisee's cable system, consistent with applicable federal and state law. Notwithstanding anything to the contrary, this section shall not enlarge or restrict the City's exercise of eminent domain except to the extent provided by applicable law.

D. The City shall at all times have the right, upon reasonable notice and during normal business hours, to examine records and to inspect a franchisee's facilities to the extent needed to monitor a franchisee's compliance with and performance under this Article and the franchisee's franchise agreement.

E. The City shall have the right, during the life of any franchise, to install and maintain free of charge upon the poles of the franchisee any wire and pole fixtures necessary for any municipal purpose on the condition that

such wire and pole fixtures do not interfere with the operations of the franchisee.

F. At the expiration, without right of renewal, of the term for which a franchise is granted or upon its termination and cancellation, as provided for herein, or in any franchise agreement granted pursuant hereto, the City shall have the right to require the franchisee to remove at its own expense all portions of its system from all public ways within the City.

G. At the expiration without right of renewal of the term for which any franchise is granted, including any renewal term, or upon its termination and cancellation, as provided for herein, the City, at its election, and upon payment of the fair market value to the franchisee consistent with applicable law, shall have the right to purchase and take over the franchisee's system in the public rights-of-way. The fair market value price shall not include, and the franchisee shall not receive, anything for the valuation of any right or privilege appertaining to it under a franchise. Upon the exercise of this option by the City and its service of an official notice of such action upon a franchisee, the franchisee shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the system, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above, and the franchisee shall execute such warranty deeds or other instruments of conveyance to the City as shall be necessary for this purpose. The franchisee shall do nothing during the term of its franchise or any extension thereof to in any way prevent or hinder the City from purchasing the system under the option contained herein.

SECTION 4. Repeal of Conflicting Ordinances. All sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith shall be and the same are hereby repealed to the extent of such conflict.

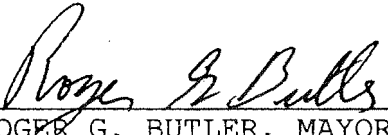
SECTION 5. Savings. All rates, fees, charges and financial obligations previously accrued pursuant to the ordinances and resolutions hereby repealed shall continue to be due and owing until paid.

SECTION 6. Severability. If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

SECTION 7. Applicable Law. This Ordinance shall be construed in accordance with the law of the State of Florida and is subject to applicable local, state and federal law.

SECTION 8. Effective Date. This ordinance shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED AT A REGULAR COUNCIL MEETING THIS 11 DAY OF September, 2000.




ROGER G. BUTLER, MAYOR

ATTESTED TO AND FILED IN MY OFFICE THIS 21 DAY OF September, 2000.



BONNIE J. MAZURKIEWICZ
CITY CLERK

LEGAL REVIEW:



DAVID LA CROIX
City Attorney
ord/cable